

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
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Case No. S-2355-A

PETITION OF SMART DEVELOPMENT/PREMIERE HOMES, LLC

OPINION OF THE BOARD

(Hearing held September 19, 2001)
(Effective date of Opinion: November 1, 2001)

Case No. S-2355-A is a Petition for a Special Exception Modification to allow for the construction of 106 multi-family dwelling units and associated parking and other amenities on 5.2 acres of land located on the east side of Snouffer School Road approximately 300 feet south of the intersection of Snouffer School Road and Centerway Road (the "Petition"). The Petition is filed pursuant to Sections 59-C-1.31 (d) and 59-G-2.36.2 of the Zoning Ordinance of Montgomery County, Maryland, Montgomery County Code, 1994, as amended (the "Zoning Ordinance").

Decision of the Board: Petition GRANTED, subject to the conditions
enumerated below.

Pursuant to Section 59-A-4.11 (a) of the Zoning Ordinance the Montgomery County Board of Appeals held a public hearing on September 19, 2001.

Scott C. Wallace, of Linowes and Blocher LLP, appeared on behalf of Smart Development/Premiere Homes, LLC, (the "Applicant"). Mr. Wallace called two witnesses in support of the Petition; including an expert in civil engineering and a representative of the Applicant.

William Landfair, Ed Axler, and Seekey Cacciatore, Staff of the Montgomery County Planning Board (the "Planning Board"), also participated in the proceedings on behalf of the Planning Board. Mr. Landfair reviewed the Planning Board's recommendation to approve the requested modifications, subject to the conditions enumerated below.

EVIDENCE PRESENTED

1. The subject property (the "Property"), also known as Parcel 549, Block B, Montgomery County Tax Map GU 121, is comprised of 5.2 acres and is located along the east side of Snouffer School Road approximately 300 feet south of its intersection with Centerway Road. It is irregular in shape and is unimproved.

2. The Property is zoned I-4, light industrial. (Exhibit 11).

3. The Property is subject to Special Exception S-2355 (the "Special Exception"), approved on April 14, 1999, which permits the use of the Property and an adjacent 3 acre parcel for construction of 174 multi-family dwelling units and associated parking and other amenities.

4. The Applicant requests a modification to the original Special Exception to:

(a) reduce the land area of the original Special Exception from 8.2 acres to 5.2 acres;

(b) reduce the number of dwelling units proposed for construction from 174 to 106; and

(c) revise the layout of the proposed buildings, parking and amenities on the Property.

[See Exhibit 17a, Revised Site Plan. Collectively, the improvements proposed in the Petition are referred to herein as the "Project."]

5. All of the land contiguous to the Property is zoned I-4, except for the Green Farm Conservation Park to the north, which is zoned R-200. (Exhibit 11) A self-storage facility is being constructed to the south of the Property (on the adjacent 3 acre parcel that was part of the original Special Exception); a gas station with convenience mart is approved for development to the northwest of the Property on Snouffer School Road. The Montgomery County Airpark is also located near the Property to the north and east. The land across Snouffer School Road from the Property is zoned R-200 and PNZ (Planned Neighborhood Zone) and is developed with residential uses of moderate density.

6. The Property is subject to the 1985 Approved and Adopted Gaithersburg Vicinity Master Plan (the "Master Plan"). (Exhibit 10). The use of the Property for dwellings was determined to be consistent with the Master Plan in the approval of the Special Exception.

7. The Project, as proposed in the Petition, is in compliance with all of the applicable development standards for dwellings in the I-4 zone. (Exhibit 17)
8. The Petition proposes landscape plantings along Snouffer School Road to mitigate the impact of traffic noise on residents. Plant species will be chosen to improve the appearance of the Property from Snouffer School Road. (Exhibit 17(c)).
9. The Petition also proposes landscape plantings along the southern edge of the Property adjacent to an existing self-storage facility. This landscaping will serve as a buffer between the activities at the self-storage facility and the residential community proposed for the Property. (Exhibit 17(c)).
10. The Petition proposes 163 surface parking spaces which meets the requirements contained in Section 59-E-3.7 of the Code. (Exhibit 17).
11. The Petition complies with the Forest Conservation Law. A Natural Resources Inventory/Forest Stand Delineation ("NRI/FSD") designated NRI/FSD No. 4-02025, for the Property has been approved by the Plant Board Staff. A Preliminary Forest Conservation Plan ("FCP") has also been approved by Planning Board Staff. The Applicant proposes to comply with the Forest Conservation Law by retaining on-site priority forest (1 acre) and by reforestation utilizing both onsite landscaping credits and off-site planting. (Exhibits 7 and 8).
12. The Petition complies with the County's requirements for storm water management. The Applicant has submitted a Stormwater Management Concept Plan that was approved by the Montgomery County Department of Permitting Services ("MCDPS"). The Applicant's Stormwater Management Concept Plan proposes on-site water quality and quantity control utilizing an underground storage facility and sand filter.
13. The Property is located outside of the restricted noise contours identified in the Federal Aviation Administration Part 150 Noise Exposure Report (July 1991) and the Master Plan. Cumulative noise levels on the Property from all aircraft is below Planning Board guideline level of 60 Ldn.
14. The Planning Board Staff reviewed the Petition and recommended approval, subject to the condition that the Applicant be bound to comply with all submitted statements and plans. (Planning Board Staff Recommendation, Exhibit 18 (the "Staff Report")).
15. The Board adopts and incorporates by reference the findings contained in the Staff Report.

16. The Planning Board reviewed the Petition and by letter dated September 14, 2001, recommended approval of the Petition, subject to several conditions. (Exhibit 20). The Board adopts the Planning Board's Conditions of Approval.

FINDINGS OF THE BOARD

Based upon the above-listed evidence and testimony and evidence of record, the Board concludes that the Petition complies with the General Conditions for granting special exceptions, as set forth in Section 59-G-1.2 of the Zoning Ordinance and the specific standards and requirements set forth in Section 59-G-2.36.2 of the Zoning Ordinance for granting special exceptions for dwellings. Specifically, the Board concludes as follows:

A. General Conditions (59-G-1.2)

Section 59-G-1.2.1

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of the adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

The inherent physical and operational characteristics associated with residential development include, but are not limited to: parking and vehicular circulation, residential activity, recreational facilities, and other features such as landscaping and building design. The Project is designed to focus all activity in the center of the Property, which is appropriate for a residential community. Landscaping along Snouffer School Road and the location of a parking lot across from the self-storage facility will act as buffers to enhance the compatibility of the Project with the surrounding uses. Accordingly, the Petition proposes residential development that minimizes the effects of any of the inherent characteristics the Project might have on the nearby properties and general neighborhood. There are no non-inherent adverse effects of the Petition nor any adverse effects created by unusual characteristics of the Property.

Section 59-G-1.21(a)–(c)

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

1. *Is a permissible special exception in the zone.*

Section 59-C-5.2 permits residential dwellings in the I-4 Zone by special exception.

2. *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

As discussed in Section B, below, the Property complies with the standards and requirements set forth for the use in Division 59-G-2, specifically Section 59-G-2.36.2 of the Zoning Ordinance, "Dwellings."

3. *Will be consistent with the general plan for the physical development of the district, including any master plan or portion thereof adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Project is located in the Gaithersburg Vicinity Planning Area and is subject to the 1985 Gaithersburg Vicinity Master Plan (previously defined herein as the "Master Plan"). The Planning Board determined that the use of the Property as proposed in the Petition is not inconsistent with the Master Plan. Further, the use of the Property for multi-family dwellings, which is not modified in the Petition, was determined to be consistent with the Master Plan in the approval of the Special Exception.

4. *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.*

The Petition does not seek to increase the density, scale or bulk of the proposed structures or to increase the intensity and character of activity, traffic and parking conditions as these elements were approved in the Special Exception.

The Petition proposes a revised layout of the buildings and parking areas that enhances the compatibility of the Project with the surrounding general character of the neighborhood. As shown in the Site Plan (Exhibit 17), the residential buildings are oriented away from the adjacent commercial uses and set back from Snouffer School Road; landscaping and a parking lot provide additional buffering.

5. *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.*
6. *Will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity at the subject site, if established elsewhere in the zone.*

The use on the Property for multi-family residential dwellings, which is not modified in this Petition, was determined to be compatible with the surrounding properties and general neighborhood in the Special Exception. Further, this Petition proposes the development of significantly fewer residential units than were approved in the Special Exception, while providing enhanced amenities and site design. Accordingly, the Project will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood and will not cause any objectionable noise, vibrations, fumes, odors, dust, glare or physical activity.

7. *Will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature. Special exception uses in accord with the recommendation of a master or sector plan are deemed not to alter the nature of an area.*

The Petition proposes the same residential use as previously approved in the Special Exception and therefore will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses to affect the area adversely or alter its predominantly residential nature.

8. *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.*

The Petition proposes development of housing that will meet the underserved population of moderate income level individuals and families that do not qualify for housing programs for low income households. The proposed development of housing units will, in fact, enhance the welfare of workers and residents in the area by increasing the variety of quality housing options near employment centers.

9. *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*
 - i. *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*
 - ii. *With regard to findings related to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The Planning Board will determine the adequacy of public facilities at the time of subdivision approval. With regard to the safety of the pedestrian and vehicular circulation system, the Petition proposes an access driveway and internal parking lots that are adequately lit and comply with applicable requirements in terms of design and sight distance for turning movements. Further, the Petition proposes sidewalks in compliance with applicable County requirements. Accordingly, the Project will have no detrimental impact on vehicular and pedestrian circulation.

B. Specific Conditions for Dwellings (59-G-2.36.2)

Sec. 59-G-2.36.2. Dwellings.

- (a) *Dwellings in a commercial or industrial district must be compatible with existing or planned development on the same lot or tract and be compatible with the surrounding area. Dwellings developed in a commercial or industrial district may be combined with proposed or existing office, retail or industrial development or may be developed in lieu of non-residential development, provided there remains adequate land zoned for such development to serve the immediate neighborhood.*

The Petition, which does not modify the use as approved in the Special Exception, proposes a residential community that will provide attractive, convenient and affordable housing in close proximity to nearby employment centers. The proposed density conforms to the applicable standards and will be keeping in character with the

surrounding neighborhood which includes a mix of uses and development densities. Finally, the Project is with appropriate buffers to ensure that the residential use will blend with the existing uses as part of a cohesive neighborhood. Accordingly, the Project will be compatible with the surrounding area.

(b) *Dwellings in a commercial or industrial district are subject to the following standards:*

- (1) *Not more than twenty-five percent (25%) of the land which is either zoned or recommended for commercial or industrial zoning in the applicable approved and adopted master plan may be used for housing.*

Approximately 900 acres are zoned or recommended for industrial or commercial uses in the Master Plan area. This Project is the only residential project on I-4 zoned land in the planning area and represents an insignificant amount (approximately 1%) of the total industrial or commercial zoned property.

- (2) *Dwellings in a commercial or industrial district must meet the development standards of the applicable zone concerning a minimum setbacks, green area, and lot coverage. The base residential density is 6.0 units per acre, which may be increased up to 21.5 units per acre if at least 35 percent of the units are productivity housing for households with incomes at and below the area wide median income, as provided for in Chapter 25B, Article IV, of the County Code. The maximum height allowed in the applicable commercial zone may be adjusted not to exceed a total height of 50' to accommodate residential development above a commercial structure as authorized under Sec. 59-G-1.23. These standards apply to all buildings on a site, including those that contain housing. The required green area may be adjusted to assure compatibility of uses, or to accommodate housing if not otherwise feasible or appropriate.*

The Project meets the development standards of the I-4 Zone concerning setbacks, green area and lot coverage. (Exhibit 17). Further, the Petition proposes productivity housing for income levels below the area-wide median income level pursuant to Section 25B-17(j) of the Code. Accordingly, the proposed density of 21.15 dwelling units per acre is permitted. Finally, the proposed height of the buildings is 42 feet, which meets the requirement of the underlying I-4 Zone.

- (3) *Access must be provided by one or more direct driveways to a public street. The entrance must be located and appropriately lighted to assure safe access for residents, whether or not commercial or industrial uses on the same lot are in operation.*

An access driveway to serve the Project is proposed for Snouffer School Road, a public street. The driveway will be appropriately lit with a 20-foot light pole, as shown

on Exhibit 17(c). Mr. James Glascock, an expert in civil engineering, testified that the location of the driveway conforms to Montgomery County Department of Public Works and Transportation requirements for minimum sight distances and turning radii and will be safe for vehicular and pedestrian traffic.

- (4) A minimum of one (1) on-site parking space per dwelling unit must be provided. Additional parking spaces must be provided up to the total required by the relevant standards of Section 59-E-3.7, except that the Board may approve shared parking in accordance with the provisions of Section 59-E-3.1 to accommodate these additional spaces.*

The Petition proposes 163 parking spaces, which meets requirements of Section 59-E-3.7 of the Zoning Ordinance.

- (5) The property must be located in an area served by public water and sewer and must be in water and sewer categories 1, 2, or 3.*

The Property is served by public water and sewer and is in Sewer Category 1 and Water Category 1.

Therefore, based upon the foregoing, the Board **GRANTS** the Petition for the above-described Project, subject to the following conditions:

1. The Applicant is bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorneys, to the extent that such evidence and representations are identified in this opinion.
2. The Applicant is bound to comply with all submitted statements and plans.
3. Approval of a preliminary plan of subdivision by the Montgomery County Planning Board in accordance with the Subdivision Regulations, Chapter 50 of the County Code.
4. Approval of a site plan by the Planning Board in accordance with the approval procedures for site plan, Division 59-D-3 of the Zoning Ordinance.
5. Approval of an access permit by the Montgomery County Department of Public Works and Transportation.
6. Installation of a natural surface trail connection via a bridge to the Green Farm Conservation Park. Final location of trail and details of construction must be approved by Parks and Natural Resources staff prior to issuance of building permit. A park construction permit must be obtained prior to starting any work on park property.

7. Approval and compliance with conditions of a Final Forest Conservation Plan prior to record plat or release of sediment and erosion control or building permit, as appropriate.

8. Compliance with Department of Permitting Services requirements for sediment and erosion control and stormwater management.

9. Determination of the practicality of providing pedestrian access through the southwestern corner of the subject property at the time of site plan review.

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Donald H. Spence, Jr., Chairman, Angelo M. Caputo and Allison Fultz in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 1st day of November, 2001.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (Section 59-A-4.63 of the Zoning Ordinance). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.

